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The Affordable Care Act and International Recruitment and Migration of Nursing Professionals

HELEN D. ARNOLD*

ABSTRACT

Through its various provisions, the Affordable Care Act will insure more than thirty million Americans by January 1, 2014. This dramatic increase in coverage will have significant effects on both the U.S. economy and its healthcare system. Nursing professionals make up a large portion of the U.S. healthcare system and with a dramatic nursing shortage already in place, employers increasingly look abroad to fill nursing vacancies. Due to the increasing effects of globalization, foreign nurses have become an integral part of the U.S. healthcare system. This note argues that the increased coverage created by the Affordable Care Act will increase the demand for nurses, thus requiring greater recruitment and migration of nursing professionals from abroad.

INTRODUCTION

The Affordable Care Act, enacted in 2010 (and termed “Obamacare” by both its dissenters and the Obama administration),¹ will effectuate an overhaul of the United States healthcare system by January 1, 2014. With its goal of reducing insurance premiums and insuring a majority of the fifty million U.S. residents who are currently uninsured, the Act changes the administration of government-funded insurance programs, expands Medicaid, and levies a financial penalty for those who decide to

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1. See Jeffrey H. Anderson, *It's Not 'the Affordable Care Act,' Republicans*, THE WEEKLY STANDARD BLOG (June 17, 2013 10:33 A.M.) http://www.weeklystandard.com/blogs/it-s-not-affordable-care-act-republicans_735261.html.

remain uninsured.² This overhaul will have significant and far-reaching effects, not just for the U.S. healthcare system, but also for the international labor trade in nursing professionals and nurse migration to the United States.

With a dramatically worsening nursing shortage already in effect in the United States, nurse migration has been a principal source of labor for the U.S. healthcare system over the last few decades. Nurses make up the largest sector of the healthcare workforce in the United States, and the demand for nurses has been increasing steadily since the 1990s. Because of systemic problems with the sources of domestic nurses, the U.S. healthcare system has relied in part on migrant nurses, foreign-trained nurses migrating to the United States to work in the U.S. healthcare system. The use of foreign-trained nurses has both positive and adverse effects, not only on the U.S. healthcare system, but also on the foreign-trained nurses themselves.

The Affordable Care Act will have a significant effect on healthcare organizations and their reliance on foreign-trained nurses. Combined with systemic factors already in place, such as the aging population of the United States and the rapid advances in healthcare technology, insuring a large amount of U.S. residents will increase the demand for nurses in the U.S. healthcare system. Thus, as the United States continues to rely on foreign nurses, the Affordable Care Act will increase both international recruitment of nursing professionals and nurse migration to the United States.

I. THE AFFORDABLE CARE ACT AND THE AMERICAN HEALTHCARE SYSTEM

On March 23, 2010, President Barack Obama signed into law the Patient Protection and Affordable Care Act,³ codified in the United States Code at 42 U.S.C. Section 18000 (the Affordable Care Act or, as often used in this note, the Act). The law is a comprehensive overhaul of

2. On June 28, 2012, the Supreme Court issued its opinion in *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566 (2012), upholding the major provisions of the Affordable Care Act. Most importantly, the Court held that the individual mandate, which requires individuals to maintain an essential minimum of healthcare coverage or face a penalty, is constitutional as a tax. *Id.* at 2600. The Supreme Court did, however, hold that the Act's expansion of Medicaid "violates the Constitution by threatening States with the loss of their existing Medicaid funding if they decline to comply with the expansion." *Id.* at 2575. The Court determined that this violation could be remedied by "precluding the Secretary [of Health and Human Services] from . . . withdraw[ing] existing Medicaid funds for failure to comply with the requirements set out in the expansion." *Id.* Thus, the states are not required to comply with the Act's expansion of Medicaid.

3. *Liberty Univ. v. Geithner*, 671 F.3d 391, 397-98 (4th Cir. 2011), *vacated on other grounds*, 133 S. Ct. 679 (2012).

the United States healthcare system, spanning over 900 pages.⁴ The Act institutes numerous changes to the financing of healthcare in the United States and will have significant and far-reaching effects on the U.S. healthcare system.

In findings attached to the Act, Congress calculated that national health care spending in the United States in 2009 was approximately \$2.5 trillion.⁵ This makes up 17.6 percent of the national economy.⁶ Because of the large expenditure within this sector of the American economy and the perceived defects in the U.S. healthcare system, the Act attempts to correct certain problems with the healthcare system and the market for healthcare more generally.

The Act regulates the health insurance market, “how and when healthcare is paid for, and when health insurance is purchased.”⁷ Congress sanctioned the Act to address what it has identified as a cost-shifting scenario in the U.S. healthcare system.⁸ Currently, fifty million U.S. residents are uninsured.⁹ “Some individuals . . . make an economic and financial decision to forego health insurance coverage and attempt to self-insure, which increases financial risks to households and medical providers.”¹⁰ In findings attached to the Act, Congress identified a multistep process whereby the uninsured’s consumption of health care leads to higher premiums for those individuals who are insured.¹¹ First, some uninsured individuals consume health care and fail to pay the full costs.¹² Second, the unpaid costs of this health care—\$43 billion in 2008 according to Congressional findings—are shifted to and spread among medical providers.¹³ Third, medical providers, by imposing higher charges, shift and spread the unpaid costs to private insurance companies.¹⁴ Thus, private insurance companies are forced to charge higher premiums to those already insured.¹⁵ Congress calculated that this cost-shifting increases family premiums by an average of \$1,000 per year.¹⁶

4. *Sebelius*, 132 S. Ct. at 2580.

5. 42 U.S.C. § 18091(2)(B) (2010).

6. *Id.*

7. *Id.* § 18091(2)(A).

8. See *Florida v. U.S. Dep’t of Health & Human Servs.*, 648 F.3d 1235, 1244-45 (11th Cir. 2011), *aff’d in part and rev’d in part*, 132 S.Ct. 2566 (2012).

9. *Id.* at 1244.

10. 42 U.S.C. § 18091(2)(A).

11. See *id.* § 18091(2)(F) (discussing the multi-step process).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

The Affordable Care Act seeks to extend insurance to more than thirty million people, primarily by expanding Medicaid and providing federal subsidies to help lower- and middle-income Americans buy private coverage.¹⁷ It will “create ‘insurance exchanges’ through which certain individuals and families may receive subsidies to substantially reduce the cost of purchasing health insurance” and “significantly expand eligibility for Medicaid.”¹⁸ It will also mandate that many individuals obtain health insurance or face an annual tax penalty.¹⁹

Certain provisions of the Affordable Health Care Act will have the greatest impact on the U.S. healthcare system. First, effective June 21, 2010, the Affordable Health Care Act established a program whereby individuals with preexisting conditions who do not have insurance coverage may enroll in insurance programs created through contracts between the Secretary of Health and Human Services and individual states or nonprofit private entities.²⁰ The Act provides that “[n]ot later than [ninety] days after March 23, 2010, the Secretary shall establish a temporary high risk health insurance pool program to provide health insurance coverage for eligible individuals.”²¹ An “eligible individual” is one who “has not been covered under creditable coverage . . . during the [six]-month period prior to the date on which such individual is applying for coverage through the high risk pool”²² and has a “pre-existing condition” as defined by the Secretary.²³ This provision discourages insurers from “dumping” or “encourage[ing]” those insured to “disenroll from health benefits coverage prior to enrolling in coverage through the program” by imposing sanctions for such actions.²⁴ Thus, the Act protects those who were previously unable to obtain insurance because of a preexisting condition by creating contracts with states and nonprofit entities to maintain essential coverage for these individuals. These contracts mandate that if a state or nonprofit entity wishes to maintain these insurance policies for the “high risk pool” of individuals with preexisting conditions, they cannot encourage their insured to disenroll or dump those who have preexisting conditions.

17. See CONG. BUDGET OFFICE, UPDATED ESTIMATES FOR THE INSURANCE COVERAGE PROVISIONS OF THE AFFORDABLE CARE ACT, CONGRESSIONAL BUDGET OFFICE 3 (March 2012), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/03-13-Coverage%20Estimates.pdf>.

18. *Id.* at 1.

19. 26 U.S.C. § 5000A (2010).

20. 42 U.S.C. § 18001(a)-(d) (2010).

21. *Id.* § 18001(a).

22. *Id.* § 18001(d)(2).

23. *Id.* § 18001(d)(3).

24. *Id.* § 18001(e)(2).

Second is a requirement termed the “individual mandate.” Effective January 1, 2014, all individuals (except certain low-income individuals) in the United States must purchase health insurance or face a \$695 annual fine.²⁵ “The individual mandate requires an ‘applicable individual’ to ‘ensure’ that beginning after 2013, the individual ‘is covered under minimum essential coverage.’”²⁶ “If an individual ‘taxpayer’ fails to obtain the required coverage, [he or she] is subjected to a ‘penalty.’”²⁷ Per Congressional findings, “[t]he requirement achieves near-universal coverage by building upon and strengthening the private employer-based health insurance system, which covers [176 million] Americans nationwide.”²⁸

According to Congressional findings, the individual mandate is a crucial part of the new healthcare insurance scheme created by the Affordable Care Act. “The requirement is essential to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold.”²⁹ “[I]f there were no requirement,” Congress maintains, “many individuals would wait to purchase health insurance.”³⁰ “By significantly increasing health insurance coverage, the [individual mandate], together with other provisions of this Act, will minimize this adverse selection and broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums.”³¹ Thus, by requiring healthy individuals to purchase healthcare and become part of the insured pool of Americans, the individual mandate will raise the overall monies put into the United States healthcare insurance scheme. The individual mandate is an “essential part” of the “larger regulation of economic activity” of the Act because “the absence of the requirement would undercut [f]ederal regulation of the health insurance market.”³²

According to the Congressional Budget Office (CBO), which is a nonpartisan federal agency that provides economic data to Congress, the law will cost the United States government “just under \$1.1 trillion”

25. Jill Jackson & John Nolen, *Health Care Reform Bill Summary: A Look at What's in the Bill*, CBS NEWS (Mar. 21, 2010, 6:31 PM), http://www.cbsnews.com/8301-503544_162-20000846-503544/health-care-reform-bill-summary-a-look-at-whats-in-the-bill/.

26. *Liberty Univ. v. Geithner*, 671 F.3d 391, 398 (4th Cir. 2011) (citing I.R.C. § 5000A(a)).

27. *Id.* (citing I.R.C. § 5000A(b)(1)).

28. 42 U.S.C. § 18091(2)(D).

29. *Id.* § 18091(2)(I).

30. *Id.*

31. *Id.*

32. *Id.* § 18091(2)(H).

in ten years.³³ However, the CBO also estimates that the Affordable Care Act will reduce the federal deficit by \$210 billion over a decade.³⁴

Congress's findings state that the Act's multiple provisions, combined together:

(1) "will add millions of new consumers to the health insurance market" and "will increase the number and share of Americans who are insured";

(2) will reduce the number of the uninsured, will broaden the health insurance risk pool to include additional healthy individuals, will increase economies of scale, and will significantly reduce insurance companies' administrative costs, all of which will lower health insurance premiums;

(3) will build upon and strengthen the private employer-based health insurance system, which already covers "[176 million] Americans", and

(4) will achieve "near-universal" coverage of the uninsured.³⁵

Thus, the Affordable Care Act effectuates a significant and far-reaching overhaul of the United States healthcare system. According to Congressional findings, "[t]he economy loses up to \$207 billion a year because of the poorer health and shorter lifespan of the uninsured."³⁶ "By significantly reducing the number of the uninsured,"³⁷ the "Act will add millions of new consumers to the health insurance market, increasing the supply of, and demand for, health care services, and will increase the number and share of Americans who are insured."³⁸ The Act will also protect people who previously could not afford or obtain health insurance. "[Sixty-two] percent of all personal bankruptcies are

33. CONG. BUDGET OFFICE *supra* note 17, at 2.

34. DOUGLAS W. ELMENDORF, CONG. BUDGET OFFICE, CBO'S ANALYSIS OF THE MAJOR HEALTH CARE LEGISLATION ENACTED IN MARCH 2010 2 (March 30, 2011), available at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/121xx/doc12119/03-30-healthcare-legislation.pdf>.

35. *Florida v. U.S. Dep't of Health & Human Servs.*, 648 F.3d 1235, 1246-47 (11th Cir. 2011) (citing 42 U.S.C. § 18091(2)).

36. 42 U.S.C. § 18091(2)(E).

37. *Id.* § 18091(2)(E).

38. *Id.* § 18091(2)(C).

caused in part by medical expenses.”³⁹ “By significantly increasing health insurance coverage . . . [the] Act will improve financial security for families.”⁴⁰ The Affordable Care Act provides for the creation of a \$1 billion Health Insurance Reform Implementation Fund within the Department of Health and Human Services to carry out the Act. With its primary goal of decreasing the cost of insurance throughout the country for all U.S. residents and insuring a majority of the fifty million U.S. residents who are currently uninsured, the Act overhauls the healthcare insurance system, expands Medicaid, and provides financial penalties for the uninsured.

II. NURSE MIGRATION AND THE UNITED STATES

A. *Nursing Shortage in the United States Healthcare System*

Registered Nurses (RNs) make up the largest segment of the United States healthcare workforce.⁴¹ Before the enactment of the Affordable Care Act, the United States had been experiencing an increasing shortage of nurses and nursing professionals.⁴² A nursing shortage refers to a situation in which the demand for nurses exceeds the supply in a given jurisdiction. In the United States, a nursing shortage currently exists. Studies completed before 2010 showed significant problems within the United States concerning a shortage of RNs. “Since [as early as] the 1970s, the U.S. healthcare system has been [beset] by a constant nursing shortage.”⁴³ The International Centre on Nurse Migration is a nonprofit organization whose mission is to “serve as a global resource for the development, promotion and dissemination of research, policy and information on nurse migration.”⁴⁴ According to a recent study completed by the International Centre on Nurse Migration, “[s]ince 1998, the United States has been experiencing an [increased] shortage of nurses.”⁴⁵

39. *Id.* § 18091(2)(G).

40. *Id.*

41. *Nursing Shortage*, AM. ASS’N CS. NURSING, <http://www.aacn.nche.edu/media-relations/fact-sheets/nursing-shortage> (last updated Aug. 6, 2012).

42. *See id.*

43. S. Jenny Van, *Lost in Translation: The United States-Philippines Nurse Migration Problem Redefined*, 31 U. LA VERNE L. REV. 451, 451 (2010).

44. *About Us*, INT’L CTR. ON NURSE MIGRATION, <http://www.intlnursemigration.org/sections/about/aboutus.shtml> (last visited Mar. 2, 2013).

45. PATRICIA PITTMAN ET AL., U.S.-BASED INTERNATIONAL NURSE RECRUITMENT 7 (2007), available at <http://www.intlnursemigration.org/assets/pdfs/Report-on-Year-I.pdf>.

"Nursing is one of the fastest-growing job sectors in the United States."⁴⁶ "The size of . . . the nursing workforce [in the United States] comprises approximately one-fifth of the world's supply [of nurses]."⁴⁷ The nursing shortage that the United States faces, however, is of growing magnitude and will continue to grow in the coming decades. In 2002, the U.S. Department of Health and Human Services reported that the United States will need at least 800,000 new nurses by the year 2020.⁴⁸ This "results from a projected [40] percent increase in demand [by 2020] compared to a projected [6] percent growth in supply."⁴⁹

The International Centre on Nurse Migration has identified several factors for the rising demand of nurses in the United States: "the physical expansion of hospitals, an aging population and the surge of chronic diseases, physician shortages in primary care, the use of nurses as case managers in disease management companies, and the staffing of new retail and worksite clinics with nurses."⁵⁰

"Supply constraints have also impaired an adequate response to increased demand."⁵¹ The International Centre on Nurse Migration reports that nurses are increasingly "dissatisf[ied] with their jobs, and one out of every three hospital nurses under age [thirty] was planning to leave his or her current job in the next year. Among those who remain, there is a dramatic aging of the workforce."⁵² "The age of nurses at completion of their basic education and licensure has been increasing significantly over time in all types of programs."⁵³ Moreover, the United States has not been able to adequately meet the demand with domestic nurses. "Applications and admissions to nursing schools declined for six consecutive years from 1995 through 2000."⁵⁴

In December of 2009, the Carnegie Foundation for the Advancement of Teaching released a study on nursing education in the United States. According to their findings,

46. *Id.*

47. *Id.* at 6.

48. U.S. DEPT OF HEALTH & HUMAN SERVS., PROJECTED SUPPLY, DEMAND, AND SHORTAGES OF REGISTERED NURSES: 2000-2020, at 3, Chart 1 (2002), available at http://www.ahcancal.org/research_data/staffing/Documents/Registered_Nurse_Supply_Demand.pdf.

49. *Id.* at 2.

50. PITTMAN ET AL., *supra* note 45, at 7.

51. *Id.*

52. *Id.*

53. Linda H. Aiken & Robyn Cheung, *Nurse Workforce Challenges in the United States: Implications for Policy* 20 (Org. for Econ. Co-operation & Dev., Working Paper No. 35, 2008), available at http://www.who.int/hrh/migration/Case_study_US_nurses_2008.pdf.

54. *Id.* at 18.

[t]o meet current and projected shortages, nursing education programs need to increase their capacity by approximately 90 percent. However, these programs are faced with a severe shortage of faculty, making it difficult to expand; and the already small pool of qualified faculty is rapidly shrinking—almost a third are over the age of 55 and there is a dearth of baccalaureate-level nurses eligible to enter graduate programs. This has caused a six-fold increase in the number of applicants denied admission to nursing schools since 2002.⁵⁵

Thus, “nursing schools [in the United States] will need to double the number of students they graduate into the workforce” to meet the demand.⁵⁶ Although there is no shortage of applicants for these programs, there are a small number of spots.⁵⁷ Moreover, nursing schools suffer from faculty and funding shortages. According to the administrator of the United States Health Resources and Services Administration, domestic “[s]chools of nursing have long had shortages of doctoral-level faculty, and faculty shortages are the primary reason that more than 50,000 qualified nursing applicants are turned away each year.”⁵⁸ Because of these problems with the domestic supply of nurses, the United States has turned abroad to find nurses to fill the nursing shortage.

B. The Global Movement of Nursing Professionals—International Recruitment of RNs to the United States

According to the International Centre on Nurse Migration, in the last half of the twentieth century, “multifaceted demographic, economic, political and social transformations have had a significant impact on the patterns and dynamics of migration and the movement of international nurses across the globe.”⁵⁹ Health systems must balance the increased

55. Patricia Benner et al., *Book Highlights from Educating Nurses: A Call for Radical Transformation*, CARNEGIE FOUND. FOR ADVANCEMENT TEACHING, <http://www.carnegiefoundation.org/elibrary/educating-nurses-highlights> (last visited Apr. 18, 2013).

56. SLUBLOG, *Obamacare and the Nursing Shortage*, HOT AIR: GREEN ROOM (Jan. 7, 2010, 8:56 PM), <http://www.hotair.com/greenroom/archives/2010/01/07/obamacare-and-the-nursing-shortage/>.

57. *Id.*

58. Mary K. Wakefield, *Nurses and the Affordable Care Act*, AM. J. NURSING, Sept. 2010, at 11, 11.

59. ELIZABETH ADAMS & ANNETTE KENNEDY, POSITIVE PRACTICE ENVIRONMENTS: KEY CONSIDERATIONS FOR THE DEVELOPMENT OF A FRAMEWORK TO SUPPORT THE INTEGRATION

demand with a supply of nurses without jeopardizing patient care.⁶⁰ Governments and health services, including those in the United States, have “developed policies, made structural and resource adjustments, and actively recruited from other countries to meet the workforce shortage.”⁶¹

Because of the effects of globalization, there is an “increasing mobility of the workforce and greater interdependency of the labour markets throughout the world.”⁶² Due to the increasing nursing shortage in the U.S., employers have increasingly looked abroad to fill nursing vacancies.⁶³ In the United States, “[17 percent] of hospitals reported that they hired [foreign-educated nurses] in 2006.”⁶⁴ A study by the American Hospital Association reported “that the demand for foreign-educated nurses is rising, as forty-two percent of hospitals indicated that they hired more foreign nurses in 2006 than in 2005.”⁶⁵ Moreover, “approximately 850 of 5,000 community hospitals were conducting some form of international nurse recruitment” in 2006.⁶⁶

“Healthcare organizations in the United States have actively recruited professional nurses from abroad for over [fifty] years in response to cyclical nurs[ing] shortages in hospitals and nursing homes.”⁶⁷ Increasingly since the 1990s, the United States has turned to the recruitment of foreign nurses to help meet the rising demand for nursing professionals and the shortage of nurses to be found in the United States.⁶⁸ In the late 1990s, a cozy niche of about thirty or forty U.S.-based international nurse recruitment firms carried out the recruitment of foreign nurses to the United States.⁶⁹ One study found that, in 2007, there were 267 U.S.-based international nurse recruitment firms, a ten-fold increase from 1990.⁷⁰ Moreover, in 2007, all of the international recruitment firm executives interviewed for an International Centre for Nurse Migration study “indicated that they planned to expand their business in the next several years.”⁷¹ According

OF INTERNATIONAL NURSES 7 (2006), available at http://www.intlnursemigration.org/assets/pdfs/ICNM_Pos_Practice_Env.pdf.

60. *Id.*

61. *Id.*

62. *Id.* at 15.

63. PITTMAN ET AL., *supra* note 45, at 7.

64. *Id.*

65. *Id.* at 8.

66. *Id.* at 7.

67. Aiken & Cheung, *supra* note 53, at 21.

68. See PITTMAN ET AL., *supra* note 45, at 6.

69. *Id.*

70. *Id.*

71. *Id.* at 11.

to the International Centre for Nurse Migration, there are many sources for the increased recruitment of nurses from abroad to the United States. Healthcare organizations view the hiring of foreign-educated nurses “as a means to keep hiring costs down and . . . it may cost less than increasing salary and benefits across the board.”⁷² “One study estimated that, in two years, [a healthcare organization] could save \$40,000 to \$50,000 by hiring [a foreign-educated nurse] instead of a per-diem or travel nurse.”⁷³

Hospitals see foreign-educated nurses “as a competitive solution to domestic [RN] recruitment.”⁷⁴ Some hospital administrators found that an investment in foreign-educated nurses yielded a greater return than did investment in domestic recruitment.⁷⁵ Because factors such as “signing bonuses and scholarship programs with local colleges” are major cost drivers for domestic nursing recruitment,⁷⁶ hiring a foreign-educated nurse can be less expensive for healthcare organizations.

Thus, nurse migration has become a major source of labor for the nursing workforce in the United States. With the expansion of recruitment firms and healthcare organizations looking to hire foreign-educated nurses as an investment over domestic recruitment, the United States has seen an increase in foreign-educated nurses in the healthcare workforce. From “1994 through 2006, the annual number of newly licensed registered nurses from abroad tripled to more than 21,000 in 2006.”⁷⁷

1. Effects on Foreign-Trained Nurses in the United States

Global recruitment of nursing professionals can have strong effects on the RNs themselves. When foreign-trained nurses leave their home countries in order to take jobs in the United States, they face a significant social cost. For international nurses who have left family, community, and country,⁷⁸ the experience can be very stressful. Once they have arrived in the United States and found a job as a nursing professional, foreign-trained nurses face significant barriers in their professional lives. “Lack of communication skills hinders foreign nurses

72. *Id.* at 8.

73. *Id.*

74. *Id.* at 9.

75. *See id.*

76. *Id.*

77. Aiken & Cheung, *supra* note 53, at 21.

78. ADAMS & KENNEDY, *supra* note 59, at 33.

from assuming professional nurses' roles and responsibilities."⁷⁹ These "[c]ommunication barriers lead to frustration for the nurse [and] other staff members."⁸⁰ While foreign-educated nurses are required to take English proficiency exams, passing this exam does not translate to the proficiency of a native speaker. "Although international English proficiency exams contain a speaking component, they do not test proficiency in communicating medical jargon and effecting patient care."⁸¹

"American nurses have reported issues working with international nurses, including poor communication skills and differences in decision making, [behavioral] norms and role expectations."⁸² In addition, "international nurses identify a number of factors affecting adjustment in the [United States], such as variations in health care systems, language competency, knowledge of medication and pharmacology, and proficiency in technology."⁸³ The International Centre for Nurse Migration cited a study on how Korean nurses adjust to U.S. hospital settings. The study found that it took two to three years to adjust to certain categories of practice and five to ten years of adjustment for other areas.⁸⁴ Thus, foreign nurses experience a considerable adjustment period to the U.S. healthcare system and find themselves faced with significant barriers to professional progress and fulfillment.

2. Effects on the U.S. Healthcare System of Global Recruitment of RNs

a. Diversity

As the United States has become increasingly multicultural and multilingual through globalization and its effect on migration patterns, foreign nurses can be assets to the United States healthcare system.⁸⁵ "[S]ociologists have argued that the presence of racial and cultural diversity is a sign of a healthy society."⁸⁶ Because of the increasing multicultural character of the United States, "[e]mployers in health care can no longer cater to a single homogenous workforce or service user."⁸⁷

79. Terry V. Bola et. al., *Foreign-Educated Nurses: Strangers in a Strange Land?*, NURSING MGMT., July 2003, at 39, 40.

80. *Id.*

81. Van, *supra* note 43, at 469.

82. ADAMS & KENNEDY, *supra* note 59, at 35.

83. *Id.*

84. *Id.*

85. Van, *supra* note 43, at 468.

86. ADAMS & KENNEDY, *supra* note 59, at 27.

87. *Id.*

The International Centre on Nurse Migration has found that healthcare providers must offer "culturally competent care to diverse populations, increase representation and accept nurses from culturally diverse backgrounds, and to educate nurses in the skills required for culturally competent practice."⁸⁸ Recruitment of foreign nurses to the United States affects the makeup of the nursing workforce and provides a great degree of diversity within this important sector of the United States economy. "Overseas nurses bring a wealth of different experiences, skills, and personal attributes to their working environments, which enhance the care that hospitals . . . can provide for their patients."⁸⁹

"Cultural competency has been defined as the ability to function effectively in the context of cultural difference or diversity."⁹⁰ In order to be able to thrive in a diverse environment such as the United States healthcare system, it is important for nursing professionals to have a high level of cultural competence and to be able to interact with individuals whose backgrounds are diverse from their own.⁹¹ "[R]esponding to the health care needs of individuals lacking fluency in English can lead to misunderstandings and result in poor outcomes."⁹² Foreign-educated nurses can be a significant asset to the U.S. healthcare system in providing diversity and offering cultural competence in relating to patients and other professionals. "International nurses often have a wealth of knowledge and skills that should be harnessed to provide appropriate care or advise their colleagues on culturally competent care to ethnic minorities."⁹³ The International Centre on Nurse Migration notes that "[h]ealth care professionals need to be flexible in order to accommodate different cultural needs and value the obvious resource and expertise that international nurses can bring to diverse environments."⁹⁴ Thus, foreign-educated nurses practicing in the United States add to the diversity of the healthcare workforce and can be an asset to the system by providing culturally competent care to individuals.

88. *Id.*

89. Van, *supra* note 43, at 468.

90. ADAMS & KENNEDY, *supra* note 59, at 30.

91. *See id.*

92. *Id.*

93. *Id.*

94. *Id.*

b. Patient Care

Global recruitment of nursing professionals “has a significant impact on the delivery of health care in . . . [the] receiving countries.”⁹⁵ The United States must “ensure that international nurses have the competencies and skill to deliver nursing care at a safe and acceptable standard.”⁹⁶ Although some claim that nursing is a universal skill, in many aspects of its delivery, nursing care requires more than just medical competency.⁹⁷

The lack of communication skills of foreign-trained nurses has had a demonstrable effect on patient care in the United States. “The inability to properly communicate a change in a patient’s condition could delay care or cause injury.”⁹⁸ “Improperly written communication is a liability for the nurse and [the] organization.”⁹⁹ In addition, “nonverbal communication that differs from the established norm may be interpreted as inattentive, subservient, or disrespectful.”¹⁰⁰

“[F]oreign nurses are [also] not prepared for the differences in nursing practices and the way they are expected to carry out bedside care.”¹⁰¹ “They struggle with the amount of paperwork” they are expected to fill out daily.¹⁰² More significantly, foreign nurses find nursing practices and values in the United States to clash with their own,¹⁰³ and “some intentionally refuse to integrate into American society.”¹⁰⁴ Thus, patient care may suffer from this lack of cultural competency of foreign-trained nurses in their first few years in the United States.

III. THE FUTURE OF THE NURSING SHORTAGE IN THE UNITED STATES AND ITS EFFECT ON NURSE MIGRATION

With this dramatic shortage of RNs already in place in the United States, the increasing reliance on global recruitment to fill this demand, and the effects of nurse migration on United States healthcare, what will the Affordable Care Act mean for the country’s nursing shortage and nurse migration to the United States? The Act claims that it “will

95. *Id.* at 29.

96. *Id.*

97. Van, *supra* note 43, at 467.

98. Bola et. al., *supra* note 79, at 40.

99. *Id.*

100. *Id.*

101. Van, *supra* note 43, at 470.

102. *Id.*

103. *Id.*

104. *Id.*

add millions of new consumers to the health insurance market,” and it will increase “the supply of, and demand for, healthcare services.”¹⁰⁵ With “near universal” coverage of U.S. citizens, a large number—almost fifty million—who either did not partake of healthcare services or did so sparingly in emergency situations, will now use more routine healthcare services, such as check-ups and routine medical visits. These routine healthcare services are carried out primarily by RNs. Thus, the increased demand for healthcare services will increase the demand for nursing professionals.

An increased demand for healthcare in the United States will necessarily translate into an increased demand for RNs, the largest sector of the healthcare workforce. A high demand for nurses with a shortage of supply currently exists in the United States, and the Affordable Care Act’s provisions will exacerbate it. This increased demand will create a need for more foreign nurses, global recruitment of these nurses, and nurse migration to the United States. With the global workforce more mobile than ever, U.S. healthcare organizations can recruit nurses globally and fill this demand through foreign-trained nurses. Thus, the Affordable Care Act will have the effect of encouraging nurse migration to the United States and will increase the need for foreign-trained nurses in the future, especially after many of its provisions go into effect in 2014.

A. Impact of the Affordable Care Act on the National Economy and the Nursing Shortage

As of March 30, 2011, the CBO estimated that the Affordable Care Act would reduce the United States deficit by \$210 billion in the first decade after its enactment.¹⁰⁶ The CBO has also estimated that within the second decade of its enactment, the Act would reduce the deficit by another \$119 billion.¹⁰⁷ Some economists and healthcare policy analysts have argued that these figures are underestimates, as “innovations in the delivery of medical care, like greater use of electronic medical records and financial incentives for more coordination of care among doctors, would produce substantial savings while also slowing the relentless climb of medical expenses.”¹⁰⁸

In addition to reducing the economic deficit in the United States, the Act will increase total national health expenditures by more than \$300

105. 42 U.S.C. § 18091(2)(C) (2010).

106. ELMENDORF, *supra* note 34, at 2.

107. *Id.*

108. Jonathan Cohn, *The GOP’s Trick Play*, NEW REPUBLIC (Jan. 21, 2011), <http://www.tnr.com/blog/jonathan-cohn/81941/trick-play>.

billion from 2010 to 2019.¹⁰⁹ According to the Department of Health and Human Services, this increase is “estimated to occur primarily as a net result of the substantial expansions in coverage under the [Act], together with the expenditure reductions for Medicare.”¹¹⁰ This increase in national health expenditures results from the increase in insured individuals who will use health care services. “Numerous studies have demonstrated that individuals and families with health insurance use more health services than otherwise-similar persons without insurance.”¹¹¹

Therefore, while the Act will decrease the deficit and help spur the national economy, the Act will also increase spending within the healthcare system. The immediate result of this dramatic increase of insured individuals will be a significant increase in the demand for healthcare services in the United States. With an estimated increase of 0.9 percent in total national health expenditures between 2010 and 2019, the Department of Health and Human Services notes that “[t]he additional demand for health services could be difficult to meet initially with existing health provider resources.”¹¹² Hence, the United States healthcare system will see a dramatic increase in demand for healthcare services without the proper resources to meet it.

While the Department of Health and Human Services expects “price increases, cost-shifting, and changes in providers’ willingness to treat patients with low-reimbursement health coverage,” the Department’s report does not deal with how the healthcare workforce will be impacted. Some have argued that the U.S. healthcare system will face similar challenges as those faced in Canada. A conservative website, Hot Air Greenroom, argues that in Canada, because “healthcare is ‘free,’ there is high demand for [healthcare] services and the available resources are consumed all-too-quickly, leading to shortages.”¹¹³ The website quotes a Canadian official: “As budgets have been cut in healthcare settings, nurses have been caught in the middle of a speed-up. Simply put, there are fewer nurses to do more nursing.”¹¹⁴ The Canadian example puts into perspective what may happen to the U.S. healthcare workforce when the most significant provisions of the Act go into place in 2014.

109. RICHARD S. FOSTER, CHIEF ACTUARY, U.S. DEPT OF HEALTH & HUMAN SERVS., ESTIMATED FINANCIAL EFFECTS OF THE “PATIENT PROTECTION AND AFFORDABLE CARE ACT,” AS AMENDED 15 (2010), available at http://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/downloads/PPACA_2010-04-22.pdf.

110. *Id.* at 16.

111. *Id.*

112. *Id.* at 21.

113. SLUBLOG, *supra* note 56.

114. *Id.*

B. Effect of the Affordable Care Act on Global Recruitment and Nurse Migration

The increased demand for healthcare services created by the Affordable Care Act will be accompanied by an increased demand for RNs. The United States has already seen a growth in the nursing sector of the healthcare workforce. In March of 2012, the United States Bureau of Labor Statistics reported that the healthcare sector of the U.S. economy was continuing to grow.¹¹⁵ Although the United States has faced, and continues to face, the effect of a nationwide recession since 2008, the healthcare system is still an important source of jobs for Americans. The healthcare sector is an area of the economy that has more demand than it does supply. Hospitals, long-term care facilities, and other ambulatory care settings added 37,000 new jobs in March 2011, the biggest monthly increase recorded by any employment sector.¹¹⁶

As noted above, there are compelling financial incentives for the global recruitment of international nurses to the United States. Healthcare organizations can save up to \$50,000 by hiring a foreign-educated nursing professional over a domestically-trained RN.¹¹⁷ And with the systemic problems of nursing education in the United States graduating less nurses than those demanded by the United States healthcare system, healthcare organizations may have no choice but to turn abroad to find nursing professionals. With the increasing mobility of the global workforce, private and public healthcare organizations can recruit globally.

The effects of the Affordable Care Act—most significantly the increased demand for healthcare services and increased national health expenditures between 2010 and 2019—will create an even greater demand for nursing professionals. And because of the issues noted above, healthcare organizations in the United States will have to turn to the global workforce to find nurses to fill that demand. With the initial difficulty of meeting the demand for healthcare services and the financial pinch that will occur for healthcare organizations, especially in 2014 when a great number of Americans will become insured, the best option for healthcare organizations will be to hire foreign-trained nurses. Thus, the Affordable Care Act, in addition to its effects on domestic healthcare demand, will increase the demand for foreign-trained nurses and incentivize hiring nursing professionals from other countries.

115. *Nursing Shortage*, *supra* note 41.

116. *Id.*

117. PITTMAN ET AL., *supra* note 45, at 8.

Nurse migration to the United States, as explained above, has already created a large industry of nurse recruitment firms, increased the diversity of the American healthcare workforce, and had certain negative effects on patient care in the United States. With the dramatic increase of insured individuals in the United States by 2014, nurse migration to the United States will also be affected. Greater demand for foreign-trained nurses, who are cheaper and, in many instances, more readily available than domestic nurses, will increase nurse migration to the United States and the hiring of international nurses to fill the demand in the U.S. healthcare workforce.

IV. CONCLUSION: THE AFFORDABLE CARE ACT, NURSE MIGRATION, AND THE EFFECT ON THE UNITED STATES HEALTHCARE SYSTEM

The combined provisions of the Affordable Care Act will have the effect of increasing the demand for healthcare services in the United States. By insuring a majority of the uninsured Americans in the United States, the Act will, according to the Department of Health and Human Services, increase the demand of healthcare services and national healthcare expenditures overall. With this increased demand for healthcare services comes an increased demand within the healthcare workforce, especially for nursing professionals, who carry out routine medical tasks that will be increasingly consumed by those newly insured.

Healthcare organizations have compelling financial incentives for recruiting nursing professionals from abroad.¹¹⁸ Organizations can save money and increase benefits for their nurses across the board by hiring foreign-trained nurses instead of domestically-educated RNs.¹¹⁹ Moreover, because of the systemic problems facing domestic nursing schools across the United States, foreign-trained nurses are at times more readily available than domestic nurses. Thus, since the 1990s, U.S. healthcare organizations have used the increasing mobility of the global workforce to their advantage through international recruitment and migration of foreign-trained nurses.

This increasing reliance on foreign-educated RNs has had a demonstrable and significant impact on the United States healthcare system. First, foreign-trained nurses arriving in the United States to pursue a career in healthcare face significant obstacles such as communication and cultural issues in the delivery of their care.¹²⁰

118. *See id.* at 7-9.

119. *Id.*

120. *See* Bola et. al., *supra* note 79; Van, *supra* note 43, at 467-73.

Domestically trained nurses report issues with working with their foreign-trained counterparts.¹²¹ Second, the use of foreign-trained nurses has created greater diversity within the ranks of the healthcare system in the United States.¹²² Foreign-trained nurses are able to relate to the increasingly multicultural character of those people consuming U.S. healthcare. However, foreign-trained nurses may deliver care that is substantially different and, at times, less competent than care delivered by U.S. nurses.¹²³

The Affordable Care Act will exacerbate these effects of nurse migration. With the increased demand for health services and the initial difficulty in meeting this demand, healthcare organizations will increasingly turn to foreign-educated nurses. Moreover, as the Department of Health and Human Services indicates, the U.S. healthcare system will face an initial demand for healthcare services that it will not be able to meet adequately. Because of this initial rise in demand, foreign-trained nurses will look especially attractive. Thus, as the Affordable Care Act's provisions take effect, by insuring a majority of the uninsured and creating an increased demand for healthcare services, especially beginning in 2014, the United States may see an increase in nurse migration to fill the nursing shortage already in place. The effects of the use of foreign-trained nursing professionals in the U.S. healthcare system must be dealt with in the coming years as more and more insured will partake in the healthcare system, especially routine services provided by RNs. The Affordable Care Act, in addition to its intended effect of insuring U.S. residents, may also create the unintended effect of encouraging nurse migration to the United States and increasing the use of foreign-trained nursing professionals in the healthcare system.

121. ADAMS & KENNEDY, *supra* note 59, at 35.

122. See Van, *supra* note 43, at 468.

123. See Bola et. al., *supra* note 79, at 40.